COUNCIL OF THE EUROPEAN UNION

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ADDENDUM TO "I/A" ITEM NOTE

from:	General Secretariat of the Council
to:	Coreper/Council
No. Cion doc.:	18038/12 EF 323 ECOFIN 1100 DELACT 57
Subject:	COMISSION DELEGATED REGULATION (EU) No ../.. of 19.12.2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to exemptions, general operating conditions, depositaries, leverage, transparency and supervision - Intention not to raise objections to a delegated act = *Statements*

Statement by Finland, Denmark, Czech Republic, Latvia, Sweden, Ireland, Netherlands, United Kingdom, Germany, Austria, Luxembourg and Portugal

Finland, Denmark, Czech Republic, Latvia, Sweden, Ireland, Netherlands, United Kingdom, Germany, Austria, Luxembourg and Portugal are concerned about the manner in which the post-Lisbon process of producing delegated acts is being conducted.

Firstly, the Commission's draft Delegated Act for the AIFMD Regulation departs from ESMA's advice in a number of areas, without explanation. ESMA advice is compiled through a transparent and thorough consultation process, and provides expert understanding from Europe's supervisory authorities.

Secondly, while we recognise the Commission is not obliged to follow ESMA advice, the credibility of the process of producing delegated acts must be ensured. One avenue forward would be to openly consult the Member States. We therefore urge the Commission to adopt a more open and consultative approach in future, when drawing up delegated acts.

Thirdly, the draft Delegated Act for the AIFMD Regulation is extremely large and has an extensive effect on the transposition of the Level 1 Directive. The scope of national discretion is widely limited. However, the only possibility for the Member States to give comments to the draft Delegated Act for was in end-March – mid-April last year. Taking into account the amount of detail already in Level 1 Directive, this large opaque piece of the AIFMD regulatory package sets enormous challenge to the hearings of stakeholders and the national parliamentary process.